

FCC MAIL SECTION

Federal Communications Commission

DA 00-1113

May 23 2 14 PM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
GTE Service Corporation)	
GTE North Incorporated)	
GTE Communications Corporation)	
)	
Petition for Waiver)	

ORDER

Adopted: May 18, 2000

Released: May 19, 2000

By the Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier and to the provision of preferred carrier freezes.² In this Order, we grant GTE Service Corporation and its affiliated companies, GTE North Incorporated and GTE Communications Corporation, (GTE) a waiver of the preferred carrier

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, FCC 00-135 (released May 3, 2000), *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. § 64.1190.

freeze requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to enable GTE to transfer to Sprint's customer base certain customers currently presubscribed with a preferred carrier freeze to GTE Communications Corporation, d/b/a GTE Long Distance (GTE-LD), without first obtaining such subscriber's permission to lift the preferred carrier freeze.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, (Communications Act) makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵

3. The Commission recognized in the *Section 258 Order* that preferred carrier freezes may provide consumers with an additional level of protection against slamming.⁶ A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. The Commission acknowledged in the *Section 258 Order*, however, that preferred carrier freezes could be implemented in an unreasonable and anticompetitive manner. Therefore, the Commission adopted rules to ensure that local exchange carriers obtain the requisite authority from each customer before implementing a preferred carrier freeze.⁷ Pursuant to these rules, local exchange carriers must verify a customer's request for a preferred carrier freeze by either: (1) obtaining the subscriber's written authorization; (2) obtaining the subscriber's electronic authorization by having the subscriber call a toll-free number from the telephone number on which the preferred carrier freeze is to be imposed; or (3) utilizing an independent third party to verify the subscriber's oral authorization to submit the preferred carrier freeze.⁸

4. GTE seeks a waiver of section 64.1190 of our rules to allow it to lift the preferred

³ On April 10, 2000, GTE filed a Petition for Waiver (Waiver Petition). On April 18, 2000, GTE filed a Written *Ex Parte* to supplement its Waiver Petition (Supplement to Waiver Petition).

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ *Section 258 Order*, 14 FCC Rcd at 1575-91.

⁷ 47 C.F.R. § 64.1190.

⁸ 47 C.F.R. § 64.1190(d)(2).

carrier freezes of GTE-LD's affected customers and designate Sprint as their preferred long distance carrier without the customers' express authorization. The Common Carrier Bureau (Bureau) previously granted a waiver of the carrier change authorization and verification rules to Sprint to facilitate the transfer of certain GTE-LD customers, who did not select another carrier, to Sprint, pursuant to a customer transition agreement between GTE and Sprint.⁹ Because we conclude that, under the circumstances presented, it is in the public interest to grant the present waiver request, we grant GTE's petition, subject to the conditions represented in its filings and those specified in this Order.

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁰ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁴

6. We find that GTE has demonstrated that good cause exists to justify a limited waiver of the Commission's preferred carrier freeze requirements to the extent necessary to: (1) enable GTE to lift the preferred carrier freeze on the accounts of certain GTE-LD customers who have not acted to lift the freeze or selected another long distance carrier; and (2) transfer those customers to Sprint's customer base. In its Waiver Petition filed on April 10, 2000, GTE states that, in anticipation of GTE's proposed merger with Bell Atlantic Corporation, GTE-LD is in the process of discontinuing its provision of interexchange services to its customers in the Bell Atlantic region, except in New York. GTE asserts that this discontinuance of service is necessary in order to comply with the statutory restrictions on the provision of interLATA services imposed by section 271 of the Communications Act.¹⁵ GTE states that it has made the

⁹ See *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, *Sprint Communications Company, L.P.*, Order, CC Docket No. 94-129, DA 00-620 (rel. March 17, 2000) (*Sprint/GTE Waiver Order*).

¹⁰ 47 C.F.R. § 1.3.

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹³ *WAIT Radio*, 418 F.2d at 1157.

¹⁴ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ Waiver Petition at 1-2.

appropriate filings with the Commission and the relevant state commissions to be permitted to discontinue service.¹⁶

7. In order to prevent disruption of the long distance service of the affected customers, GTE entered into a customer transition agreement with Sprint. Pursuant to this agreement, any customer who did not select another carrier after several notifications and prior to March 31, 2000, would be transferred to Sprint's customer base. The Bureau granted Sprint a limited waiver of the carrier change authorization and verification rules in order to facilitate the transfer of the affected GTE-LD customers to Sprint.¹⁷ Prior to, and subsequent to, the Bureau's grant of this waiver request, GTE made various attempts via letter, postcard, billing message, and phone call to notify the affected customers of GTE-LD's intent to discontinue service and of the arrangement whereby each customer would be transferred to Sprint if that customer had not selected a new carrier by March 31, 2000.¹⁸

8. At the end of March 2000, GTE-LD furnished to Sprint the list of the affected GTE-LD customers who had not selected another long distance carrier and did not have preferred carrier freezes on their accounts, so that those GTE-LD customers could be transferred to Sprint's customer base. At the same time, GTE concluded that, despite its attempts at notification, a small percentage of customers with preferred carrier freezes were not going to take the necessary unilateral actions required to select a new carrier prior to GTE-LD's planned deadline for discontinuance of service. To prevent customers with preferred carrier freezes on their accounts from suddenly losing their ability to make 1+ long distance calls, GTE sought a waiver of the Commission's preferred carrier freeze rules to permit the transfer of these customers to Sprint.¹⁹

9. We find that special circumstances exist to justify a waiver. We recognize that a small percentage of customers that currently have a preferred carrier freeze on their accounts may not have understood the various filings received from GTE or may not have opened their mail.

¹⁶ Waiver Petition at 2. On March 1, 2000, GTE filed a Section 63.71 Application to Discontinue Service with the Commission. See *GTE Communications Corporation to Discontinue Provision of Voice Services*, Public Notice, NSD File No. W-P-D-455 (rel. March 2, 2000). That application became effective on April 2, 2000. See Waiver Petition n.2.

¹⁷ *Sprint/GTE Waiver Order*.

¹⁸ GTE first notified the affected residential and business customers of the pending discontinuance of service and transfer to Sprint through a message in those customers' bills beginning with the February 19, 2000, billing cycle. Next, GTE notified all affected customers through two letters, one on February 24-26, 2000, and another on March 6 and 11, 2000. On March 15, 2000, GTE notified all affected residential customers with preferred carrier freezes on their accounts, via postcard, of the pending discontinuance of service and the need for each customer to lift the freeze in order to select a new carrier. On February 21, 2000, and March 3, 2000, Sprint notified all affected business customers of the pending discontinuance and transfer. Finally, beginning on April 17, 2000, GTE has attempted to contact by phone all affected customers who had preferred carrier freezes on their accounts and did not respond to prior notifications. See Supplement to Waiver Petition at 2; Waiver Petition at 2-5.

¹⁹ Waiver Petition at 5.

We conclude that, in this instance, a waiver of our preferred carrier freeze rules is necessary to provide a seamless transition with no disruption of service to the transferred customers.

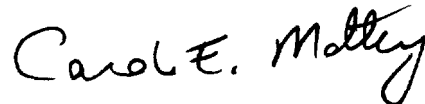
10. Because GTE has notified the affected customers repeatedly of its pending discontinuance of interexchange service and of the arrangement to transfer customers to Sprint, and because grant of a waiver will prevent these customers from temporarily losing service or paying significantly higher rates, we find that a limited waiver of the Commission's preferred carrier freeze rules is in the public interest. We find that GTE has made adequate efforts to notify the affected customers of the potential disruption of service associated with a failure to make a new preferred carrier selection. Moreover, absent a waiver of the Commission's rules, the affected customers would become unable to place "1+" interexchange calls upon GTE-LD's discontinuance of service. As a result, such customers would be forced to use dial-around or calling card interexchange services, which may be more expensive than the services they receive from GTE-LD as well as those they would receive from Sprint after the transfer.

11. For the foregoing reasons, therefore, we grant GTE's waiver request for the limited purposes described above. We find that, under the circumstances presented, it is in the public interest to permit Sprint to become the preferred carrier of the affected GTE-LD customers, without first obtaining each GTE-LD customer's express authorization to lift the preferred carrier freeze. The grant of this waiver is conditioned upon: (1) the renewal of the preferred carrier freezes on the accounts of the affected customers after their transfer to Sprint, which effectively places those customers in the same position as they were in with GTE-LD; and (2) the provision of notice of the account changes to the affected customers, following completion of the transfer, through a billing message in the next billing cycle.

III. ORDERING CLAUSES

12. Accordingly, pursuant to authority contained in sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by GTE Service Corporation, GTE North Incorporated, and GTE Communications Corporation on April 10, 2000, and supplemented on April 18, 2000, IS GRANTED to the extent indicated herein.

13. IT IS FURTHER ORDERED that this Order is effective upon its release.



Carol E. Matthey
Deputy Chief, Common Carrier Bureau